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ABSTRACT

This report reviews current state policy and practices in the disciplining of students with disabilities, as they are expressed in state documents including statutes, regulations, and other types of written records. Federal law, regulations, and case law are summarized in the report's introduction and background. Findings are presented in terms of an overview of the state documentation as well as specific components of state discipline policy. Issues discussed include definitions, the evaluation team and the Individualized Education Program, referral for evaluation concerning suspected disabilities during disciplinary action, consecutive versus cumulative days, in-school suspension and transportation, continuation of education after suspension and expulsion, violence and weapons, and some unique state provisions. The report concludes that the success of the reform effort to raise the standard of American education depends on eliminating the perception that students with disabilities are exempt from school discipline rules and on development of a clear understanding of the need for protecting their rights. The report does not contain a compilation of all state-level legal provisions, nor is it intended to be a source of any state's complete policy on this topic. An appendix lists source documents reviewed. (Contains 25 references.) (JDD)

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ED 378 711

DISCIPLINE AND STUDENTS WITH DISABILITIES: AN ANALYSIS OF STATE POLICIES

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U.S. DEPARTMENT OF EDUCATION
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ABSTRACT

This analysis is a review of current state policy and practices in the disciplining of students with disabilities. Statutes, regulations and other types of written records that contain state requirements and guidelines for handling discipline matters involving students with disabilities were used to gather the data for analysis. A complete list of the materials used for the study are contained in an appendix.

It is important to note that data gathering was limited to documents available in the library at the National Association of State Directors of Special Education. The focus of the task was an identification of the components and trends in state policy regarding the discipline of students with disabilities. The report does not contain a compilation of all state-level legal provisions nor is it intended to be a source of any state's complete policy on this topic.

Federal law, regulations and case law on this topic are summarized in the introduction and background. The findings are presented in terms of an overview of the state documentation as well as specific components of state discipline policy. The issues discussed include terms of definitions, the evaluation team and the IEP, referral during disciplinary action, consecutive vs. cumulative days, in-school suspension and transportation, continuation of education after suspension and expulsion, violence and weapons, and some unique state provisions.

The report cites a need for more complete policy development and communication at all levels on the topic of disciplining students with disabilities. Toward this end, it is recommended that accurate information about current practice be gathered to inform the development of effective policy. The report concludes that the success of the reform effort to raise the standard of American education depends on addressing the issue of discipline as a basic element in providing all children with a safe environment that is conducive to learning.

FOREWORD

This report is the result of a study done under Project FORUM, a contract funded by the Office of Special Education Programs (OSEP) of the U. S. Department of Education and located at the National Association of State Directors of Special Education (NASDSE). Project FORUM carries out a variety of activities that provide information needed for program improvement, and promotes the utilization of research data and other information for improving outcomes for students with disabilities. The project also provides technical assistance and information on emerging issues, and convenes small work groups to gather expert input, obtain feedback, and develop conceptual frameworks related to critical topics in special education.

The purpose of this analysis is to provide an understanding of current state policy and practice in the discipline of students with disabilities as they are expressed in state documents including statutes, regulations and other types of written records. The analysis was undertaken as part of Project FORUM's work during the second year of the contract.

The topic of discipline and students with disabilities was the focus for a number of activities in the Project FORUM workplan for the project's second contract year. A synthesis of the literature on this topic was prepared by Eric Hartwig, Ph.D. and Gary Ruesch, Esq. under contract with Project FORUM, to provide an overview of the legal, policy and practice concerns in the discipline of students eligible for special education services. The report of that synthesis and this analysis report were then used as background papers for a policy forum, a working meeting that discussed this topic, identified the critical issues, and generated action steps needed to address the problems. Copies of the synthesis and the report of the policy forum are available from NASDSE at 1800 Diagonal Road, Suite 320, Alexandria, VA 22314.

DISCIPLINE AND STUDENTS WITH DISABILITIES: AN ANALYSIS OF STATE POLICIES

INTRODUCTION

The maintenance of discipline, defined by Webster's Dictionary as "control, order, obedience to rules," is almost universally cited in educational literature as a prerequisite for successful classroom learning. Yet, school personnel and parents have mentioned a lack of discipline as one of the top three problems in our schools in every year of the 26-year history of the Phi Delta Kappa/Gallup education poll. The critical nature of this issue was revealed in the report of the most recent poll: "Two problems—the growth of fighting/violence/gangs and poor discipline—are by far the most serious problems facing U.S. public schools today (Elam, Rose and Gallup, 1994, p.41). The level of importance of this topic was illustrated at the "Education Summit" held in 1989 at which the President and the nation's Governors adopted as Goal #6 of the National Education Goals for the Year 2000 that "every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning" (*National Education Goals Report 1993*, p. vii).

With the current deep concern about increased violence in society that can be observed in the daily life of many schools especially in large urban areas, the responsibility of school officials to maintain an orderly and safe environment for all students has become a growing challenge for school officials. Many states have undertaken studies of the incidence level of violence in schools for the purpose of developing preventive programs to assist local school districts. For example, the New York State Education Department and the State Division of Criminal Justice have implemented a statewide study of the prevalence of violence in the schools of that state. The announcement of the study (New York State Education Department, 1994) reviews national reports of violence especially among youth in schools, and identifies governance—defined as rules and punishment/fairness and firmness in enforcing rules—as the number one factor of the seven major categories associated with school violence (p.9). Many other states have also initiated similar research and policy efforts (National Association of State Boards of Education, 1994).

Complicating the administration of discipline in schools are the rights afforded to all students, and especially the unique set of rights guaranteed to students who are considered disabled under federal legislation including the Individuals With Disabilities Education Act (IDEA) originally passed in 1975 and Section 504 of the Rehabilitation Act of 1973. These protections have been incorporated into state legislation and various aspects have been interpreted by federal and state courts. There is now a frequently noted perception among

teachers and school administrators that the special protection afforded to students with disabilities undermines the administration of discipline for the school as a whole.

This analysis of state policies in the area of discipline and students with disabilities is intended to respond to that perception by providing information on existing requirements at the state level as they appear in state laws, regulations and/or other policy statements. It is important to note that data gathering was limited to documents available in the library at the National Association of State Directors of Special Education. In addition, the focus of the task was an identification of the components and trends in state policy in this area. The report does not contain a compilation of all state-level legal provisions nor is it intended to be a source of any state's complete policy on this topic.

The remainder of this report includes a brief background section on the topic, a description of the method used in data gathering and analysis, a presentation of the findings, and a discussion of the implication of those results.

BACKGROUND

Available Information

It is beyond the scope of this report to provide a detailed background on all aspects of the topic of discipline of students with disabilities. The recent book by Hartwig and Ruesch (1994), a carefully documented review of the entire topic, contains a full discussion from both the educational practice and the legal perspectives. Another Project FORUM document, *Disciplining Students with Disabilities: A Synthesis of Critical and Emerging Issues*, by the same authors is a synthesis that summarizes the major issues. The brief discussion on the topic that follows is limited to the points covered in state policy documents and is intended to be only a framework to refresh the reader on the highlights of each component covered.

Federal Law and Regulations

Any attempt to understand state policy on the topic of discipline and students with disabilities must start with the observation that the topic of discipline is not specifically addressed in the two sets of federal statutes and regulations that most directly govern the provision of special education—IDEA and Section 504. The sections of the IDEA that are directly relevant to discipline policy are the requirement for "FAPE" (free appropriate public education [20 U.S.C. §1401(18)] in the least restrictive environment (LRE) [20 U.S.C. §1412(5)(B)], and the "stay-put" requirement [20 U.S.C. §1415(e)(3)]. Section 504 regulations contain similar requirements [34 CFR §104], although the Section 504 definition

of a "disabled person" [34 CFR §104.3(k)(1)] is broader in scope than the IDEA definition of a student with disabilities, and 504 has no stay-put provision. The two laws are monitored by different sections of the U.S. Department of Education: OSEP oversees IDEA while OCR is responsible for Section 504.

The IDEA provides specific due process procedures for students who are eligible for special education and related services under IDEA. Basically, they are entitled to a free appropriate public education and this right cannot be unilaterally taken away from them for any reason. Education must be provided in accordance with their individualized education program (IEP) [34 CFR§300.340-350], and any change in their program requires the development and implementation of a revised IEP. Parents must be notified of the initial placement and of any significant change in that placement, and they have a right to contest those decisions of the school by requesting a due process hearing. If they do so, the so-called "stay-put" provision applies requiring that the student remain in the current placement until all proceedings have been completed unless the school and the parent jointly agree to another arrangement. The regulations implementing IDEA have added a "*Note*" to this requirement: "While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others" [34 CFR §300.513].

Some changes were made in federal legislation effective October, 1994 that amended the IDEA concerning the expulsion of students who bring weapons to school. According to these changes, students with disabilities who bring a weapon to school could be placed in an interim alternative educational setting for not more than 45 days. State procedures must be followed and the interim placement would pre-empt the stay-put requirements if a due process hearing is requested. Concerns have been raised in many states concerning interpretation of this new provision, especially on the issue of whether the behavior is a manifestation of the student's disability (see page 4). Further clarification is expected from OSEP and the courts in this matter.

Case Law and Interpretations

The basic right of all students to due process in the administration of a school's disciplinary policies was established in 1975 by the Supreme Court case *Goss v. Lopez* [419 U.S. 565(1975)]. The *Goss* decision required that students be given oral or written notices of impending exclusion and an opportunity to present their side of the story prior to their exclusion from school. Issues about its applicability to students with disabilities were raised after the passage of IDEA in the same year.

Although there were some previous cases in the area, it was not until the Supreme court decision in *Honig v. Doe* [108 S.Ct. 592 (1988)] was issued in 1988 that any specific

direction was provided with a delineation of the procedures that must be followed in the handling of discipline matters in special education. Briefly, the *Honig* decision provided that the stay-put requirement in the IDEA prohibits schools from unilaterally excluding children with disabilities for behavior arising from their disability. Students with disabilities can be excluded from school for up to 10 consecutive days in the same way as all other students, but exclusion for longer periods constitutes a change in placement and requires the use of IDEA's change in placement procedures or a court injunction.

Further interpretation by OCR of these requirements as they pertain to students under Section 504 added that a series of suspensions of 10 or fewer days may comprise a pattern of exclusion that constitutes a significant change in placement to be determined on a case-by-case basis considering "the length of each suspension, the proximity of the suspensions to one another and the total amount of time the student is suspended" [St. Marys (PA) Area School District, 16 *EHLR* 1156 (1990); Ponca City (OK) Sch. Dist., 20 *IDELR* 816 (1993)]. OSEP has made it clear that Section 504 and OCR's interpretations of that law do not apply to students eligible under Part B.

The required steps that must be taken when a disciplinary action involves the removal of a student with a disability from school for more than 10 days are clearly stated in a document known as the "*Boggus Letter*" [Letter to Boggus, 20 *IDELR* 625 (1993)] that the Office of Special Education Programs provides in response to inquiries on this topic. Briefly, a team of persons must meet to determine whether the behavior is a *manifestation*[1] of the student's disability and whether the student's program is *appropriate* and adequately *implemented.* It is clearly stated that, even during a disciplinary removal that exceeds 10 school days, schools may not cease educational services to students with disabilities regardless of whether the misconduct is related to the student's disability. The basis for this requirement is the FAPE mandate to which all students with disabilities are entitled including those who have been suspended or expelled. In addition, OCR has decided that, if transportation is deemed to be a related service for a student with a disability, the district may not deny that service without taking the necessary due process steps [Letter to Veir, 20 *IDELR* 864 (1993)].

OCR investigations of complaints and OSEP letters responding to specific inquiries have brought additional interpretations to these and other aspects of the disciplining of students with disabilities. For example, responses concerning in-school suspension have generally concluded that continued implementation of the student's IEP and fully informing parents during the entire process of an in-school suspension in excess of 10 days would not constitute a significant change in placement [Chester County (TN) School district, 17 *IDELR*

[1]The term "manifestation" is used interchangeably in the field with similar terms such as "relationship," "connection,""association," "causation," and the like when this issue is discussed. They should be interpreted as having the same meaning.

301 (1990)]. Additionally, the incorporation of discipline plans in IEPs are strongly recommended, and may be considered a necessary component of FAPE for a particular student [Etowah County Bd. of Educ. (AL), 20 *IDELR* 843 (1993)]. More complicated interpretations exist as a result of disciplining students with disabilities for drug use. OCR allows one exception to Section 504 required procedures: "students who are handicapped solely because of addiction to drugs or alcohol may be expelled with no reevaluation" [OCR Memorandum, *EHLR* 307:05 (1988)]. However, as noted above, OSEP has stated that Section 504 and OCR's interpretative memorandum do not apply to students eligible under Part B, and made it clear that a school district's obligations to a special education student do not change upon knowledge or information that the student is using drugs [Letter to Uhler, 18 *IDELR* 1238 (1992)].

METHOD

Study Design and Limitations

This study was designed as a review of states' written policy on the disciplining of students with disabilities as contained in laws, regulations and official policy statements. The scope of the analysis was limited to the fifty (50) states. Two sources were used to locate this information: the State Policy Database (SPD) at the National Association of State Directors of Special Education (NASDSE) that contains an electronic version of state laws, regulations and IDEA Part B Plans for 32 states; and NASDSE's library that contains paper copies of the same type of documents from all states. A complete listing of the source documents located and used for each state in this analysis is contained in Appendix A.

As mentioned above, there are no specific references to discipline in existing federal special education laws and regulations and, therefore, no requirements for states to document their policies in this area. As a result, there is no consistency in the location or the nature of the details states choose for the description of their discipline policies. Every effort was made to review state documents in sections that could reasonably be expected to contain references to the topic. This effort was hampered by the conditions found in many instances such as the lack of an adequate index or table of contents. A letter was sent to the seven states for which no written policies were located advising them of this finding and requesting a response if policy documentation were available.

Data Collection and Analysis

For use in this analysis, copies were made of pertinent portions of documents from the 43 states for which data was available. After an initial review, the major components of the policies were identified. The wording of each policy was then reviewed to analyze its

provisions relative to the identified components and to note any unique content. Notes were made on the length of each excerpt as well as its contents and any special addenda such as "questions and answers" that elaborated on the policy. Although some policies were not completely clear about interpretation or implementation conditions, the scope of this study precluded any individual follow-up for clarification.

FINDINGS

Overview of State Documents

Variety among the types of documents that contain state policy on discipline is revealed in Appendix A that contains the final list of materials used for this study. The citations include special education regulations from 30 states, statutes from 6 states, 5 State Plans under IDEA Part B, and 8 other types of state documents. For some states, multiple citations were used such as both laws and regulations in Minnesota and New Hampshire. The size of the documents also varied greatly: the range was from one paragraph to 28 pages, with all but 8 states' material being under five pages. It should be noted that states include copies of their regulations as a part of, or appendices to, their State Plans, although some states elaborate on the contents in the narrative of their Plan.

In some cases, a state's policy provides that local school systems have the authority and responsibility to develop appropriate disciplinary procedures.[2] Some states with this requirement also mandate that each local education agency (LEA) file a copy of its discipline code with the state education agency (SEA). The Massachusetts Regulations [§338.2(a)] place this requirement on all LEAs, and Rhode Island Regulations [One, IV, 4.4] contain the same provision.

Some state laws contain sections covering the suspension and expulsion of all students with an addendum containing specific stipulations about students with disabilities. For example, in 1991 a new section concerning discipline was added to an Arizona law that had been in effect for over 10 years. It provided:

> § 15-844. Suspension and expulsion proceedings for handicapped pupils: Notwithstanding §§15-841, 15-842 and 15843, the suspension or expulsion of children with disabilities, as defined in §15-761, shall be in accordance with rules which are prescribed by the state board of education and which shall incorporate the change of placement requirements of the Individuals with Disabilities Education Act (20 United States Code §§1410 through 1485) and

[2]For example, see Georgia Regulations §160-4-7-.09(8)(a).

applicable case law regarding suspension and expulsion of children with disabilities.

Detailed implementation guides exist in some states. The most extensive set of regulations was found in Hawaii where the handling of student misconduct appears in 23 pages of Chapter 8-19 of the Administrative Rules. Five pages of additional provisions related to students with disabilities are also added containing extra regulations [Chapter 8-36-18] plus Implementation Guidelines and Procedures.

Specific Components of State Discipline Policy

Definitions

Many states include specific definitions of the terms "suspension" and "expulsion" in their policies. Arizona's version is an example of a general approach to the meaning of these terms: "***suspension*** means the temporary withdrawal of the privilege of attending a school for a specified period of time; ***expulsion*** means the permanent withdrawal of the privilege of attending a school unless the governing board reinstates the privilege" [*Arizona Laws*, §15-840 (1) and (2)]. Other states add the concept of 10 (or sometimes fewer) days and/or other elements of special education requirements as differentiating elements. For example, Michigan's policy defines these terms as follows: "***short-term suspension*** means a temporary exclusion (a period of time between one hour and 10 school days) from the student's educational program, class, transportation or any aspect of programs or services identified in the individualized education program by action of the board of education or its designee," and "***long-term suspension or expulsion*** means an exclusion of a student for more than 10 days.." (emphasis added) ["Michigan Position Statement," p. 2-3]. Under Oregon law, "a suspension may not exceed seven calendar days" [*Sample Procedures*, p. 96].

The Evaluation Team and the IEP

Although the topic of discipline is not a required component of discussion for the team that evaluates a student and develops the individual educational plan (IEP), recommendations are frequently made in the literature about the value of addressing this topic in the IEP.[3] Some states have written specifications for the role of the evaluation team concerning discipline. Massachusetts requires that "the IEP of every student with special needs indicate why the student is or is not expected to meet the regular discipline code and, if not, what modification of the code is required. If a modified discipline code is required, such modification shall be described in the IEP" [*Chapter 766 Regulations*, §338.2(d)].

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[3]See especially Hartwig, E. and Ruesch, G. (1994), Chapter 3.

The primary purpose of the Illinois policy statement that was issued in 1991 is "programmatic guidance regarding the incorporation of discipline procedures into the individualized education program (IEP) of students with disabilities" [*Administrative Bulletin #91-1*]. In Idaho, the Child Study Team must develop a "positive prevention/intervention plan" for students whose presenting problem includes behavior control [*Idaho Implementation Manual*, p. IV-23]. Louisiana regulations further note that "any structured program of behavior management which is included in a student's IEP shall not be considered disciplinary action" [*Regulations for the Implementation of the Exceptional Children's Act*, §459(B)].

Referral During Disciplinary Action

Specific provisions concerning the application of IDEA protections to students who are referred for suspected disabilities during a discipline action was found in the documents of 5 states: Idaho, Indiana, Maryland, New Jersey and Vermont. They provide somewhat different interpretations of the applicability of the law. Idaho devotes more than a page of instructions to this type of situation including the following general statement: "If a suspected handicapped student is subject to suspension, the student must be afforded the EHA due process rights including the right to a due process hearing and the provisions of stay-put while the case is pending" [*Idaho Implementation Manual*, p. IV-24]. In a similar manner, Vermont requires an appropriate evaluation be completed prior to discipline being imposed on a student who is suspected of being in need of special education [*Special Education Rules*, §4312(8)]. New Jersey regulations seem to cover even more circumstances: "Before a noneducationally disabled pupil can be considered for expulsion by a district board of education, the district board of education shall obtain consent from the parent or adult pupil for evaluation and the child study team shall conduct an initial evaluation according to N.J.A.C. §6:28-3.4 to determine eligibility" [*New Jersey Administrative Code*, §6:28-2.8(g)].

A different position is taken by the two other states. In Maryland, if a student not previously identified is suspended for more than 10 school days per year or expelled and "there is reason to believe that the student may have a disability," the student is immediately referred for evaluation, but "the disciplinary action can be implemented before the ARD Committee reaches its decision" [*COMAR* 13A.08.01.11G(c)]. Indiana regulations concerning expulsion provide: "For a student not previously identified as disabled under this article, a referral for an initial educational evaluation shall not stay expulsion proceedings" (*Indiana 511 IAC 7-15-2(o)*).

Consecutive or Cumulative Days

As is true for most of the other components of this issue, the topic of counting days of suspension is the subject of varying interpretations by the states. As explained above, a

suspension of more than 10 consecutive days has been determined by the courts to be a change in placement for a student with disabilities. Also, further interpretation by OCR has added that a series of shorter suspensions could be seen as a pattern of exclusion invoking the requirements involved in a change in placement. Many states have adopted the 10 consecutive days language and added the stipulation about repeated shorter suspensions. The Oklahoma regulations are an example of the exact repetition of these determinations [*Policies and Procedures*, p. 80-83].

However, there are differences in other states. For example, Indiana regulations hold that suspension shall not exceed 5 consecutive or 10 cumulative instructional days [511 IAC 7-15-1(b)]; Alaska uses the same number of consecutive days, but raises the cumulative limit to 20 days [*Alaska State Plan*, Section 8(C)]; Colorado does not include a specific number of cumulative days, but rather provides an explanation of how a series of suspensions within a school year could call for procedural protections ["A Procedural Guidelines Paper," p.2]; Wyoming regulations declare that "A public agency may not use consecutive short term suspensions for children with disabilities" [*Rules and Regulations*, §28(b)]; and, Texas regulations define expulsion as "suspension of a student from school for more than six school days within a semester" [§133.22(4)].

Counting In-School Suspension and Transportation

Thirteen (13) states' documents specifically address the issue of counting time spent on in-school suspension as part of the limit for students with disabilities. Most have adopted the stance that days spent on in-school suspension do not count toward the limits as long as the student's IEP services continue to be provided. Kansas is an example: "in-school suspensions count in the cumulative total where the nature and quality of the suspension program is not comparable to the nature and quality of the special education program being provided" [Memorandum," p.1]. Michigan has adopted a somewhat more strict interpretation of this issue: "Whenever a student is denied the opportunity to be in the IEPC-determined setting(s)," it counts as a suspension [*Michigan Position Statement - Questions*, 1989]. Further clarification in the policy advises that this is true even if the student is put in an alternative class or any other setting than the one provided in the IEP.

Similar rationales are used by those states that mention the issue of suspension from transportation as a part of the limits. Most states that mention this situation hold that the days count if a student is absent from school because of a suspension from transportation services. California laws contain a further requirement: "If an individual with exceptional needs is excluded from school bus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent" [*California Education Code*, Part 29, §48915.5(j)].

Continuation of Education After Suspension or Expulsion

As discussed above (see page 4), OSEP has stated that a district may not cease educational services regardless of whether the student's misconduct is determined to be a manifestation of the student's disability. (This is in direct contrast to Section 504 which provides that all services can be terminated if there is no relationship between the behavior and the disability.) Recently, when the state of Virginia refused to revise its regulations to add this provision on the basis that OSEP has gone beyond the *Honig* decision by extending the requirement to students whose misbehavior is unrelated to their disability, OSEP withheld their IDEA grant. The state succeeded in getting the funds released through the courts [*Virginia Department of Education v. Riley* (1994)] on the basis that no hearing was held as required in IDEA §1416(a). However, the substantive issue is being addressed. Virginia regulations provide that a student with a disability may be disciplined in the same manner as a nonhandicapped child "if there is no causal connection or if the child was appropriately placed at the time of the misconduct" [*Regulations Governing Services for Children With Disabilities*, §3.4(B)(11)(b)].

In the case of a suspension that will result in more than 10 cumulative days in a school year, Massachusetts regulations contain extended procedures. The district must get the approval of the Division of Special Education of the alternative plan and then obtain the parent's consent. The regulation also states that "the failure or refusal of the parent to consent to the provision of services under the alternative plan shall not prevent implementation of the suspension," although the stay-put provision applies if the parent requests a due process hearing [*Chapter 766 Regulations*, §338.5].

In its policy directive on this topic, Missouri states that it is important that a school district "recognize the gray area" in this matter. The state recommends "that school districts refrain from attempting to distinguish between conduct related to a student's disability and conduct unrelated to a student's disability" ["Recommendations for Discipline Policies Relating to Students With Disabilities," §IV].

Violence and Weapons

The Goals 2000: Educate America Act [P.L. 103-227], effective as federal law on March 31, 1994, incorporated the national goals (discussed on page 1) into federal legislation. Title VII, entitled the "Safe Schools Act of 1994," provides grants to LEAs to support school-community partnerships in high crime localities for developing strategies to work toward the realization of Goal #6—to make every school in America free of drugs and violence by the year 2000.

A particularly troubling aspect of school violence is the issue of student possession of weapons. Incidents involving student use of guns has received increasingly intense media coverage leading to public demands for preventative action. One response has been the Gun Free Schools Act passed in the Goals 2000: Educate America Act. This section of the Act amended the Elementary and Secondary Education Act (that includes chapter 1) to compel states to adopt a policy "requiring the expulsion from school for a period of not less than one year of any student who is determined to have brought a weapon to a school....except as such policy may allow the chief administering officer of the agency to modify such expulsion on a case-by-case basis" [Title VIII, §8001(a)(1)]. OSEP has interpreted the "case-by-case" wording as giving schools the flexibility they need to comply with special education requirements concerning the disciplining of students with disabilities [OSEP, 1994].

This new requirement has not yet been subjected to court review. Julnes and Rosenfeld (1994) interpret a similar law passed by the state of Washington last year in a similar manner based on wording in that state's laws. They comment, however, as others are now commenting about the federal version, that the legal interpretation is subject to challenge (p. 11).

Other Components of State Discipline Policies

Some states have very specific provisions in their policies that are not found in the documents of other states. For example:

• Vermont has included in its regulations a distinction between students eligible under IDEA and those considered handicapped under Section 504: A student receiving special education services must continue to receive services in accordance with the IEP during the period of discipline but, in the case of a §504 student, "the responsible agency is under no obligation to provide the student with educational services." This provision applies if there is no relationship between the behavior and the disability. [*Special Education Rules*, §4312(6)];

• Maryland regulations contain a reference to discipline notations in student files: "If the ARD Committee determines that the conduct which prompted the disciplinary action was a manifestation of the student's disability, the student shall be immediately reinstated and the record of the disciplinary action shall be removed from the student's file" [*COMAR*, 13A.08.01.11G(b)(3)];

• Connecticut statutes also refer to student records in discipline matters. Notation of expulsion and the conduct for which the pupil was expelled must be included on the child's record. However, such material "shall be expunged" if the student graduates from

high school, or "is not expelled again or suspended one or more times during the two-year period commencing on the date of his return to school from such expulsion" [§10-233d(f)].

• Iowa mandates that, for a child on a home program "who has been removed from school because of unacceptable school behavior, the program shall be reviewed by the diagnostic-educational team, including the parents, at least every thirty calendar days to review other alternatives or to determine that home instruction continues to be appropriate" [*Iowa Rules of Special Education*, §281-41.5(6)].

DISCUSSION AND CONCLUSION

The development of effective policy requires access to accurate information about current practice. Although there is some anecdotal information in the press about discipline issues, very little data exists about state practices in the administration of discipline for students with disabilities. There is no data to support or refute perceptions that students with disabilities are a significant contributing factor to the discipline problem in schools. At present, there is no federal requirement for states to report on suspensions or expulsions or other practices related to the enactment of discipline policies. The state policies reviewed for this study demonstrate the special considerations that are required to protect the rights of students with disabilities when they violate school rules. However, those policies also confirm that students with disabilities are subject to the rules of the code of behavior of the school they attend. With proper implementation of the necessary procedural steps, students with disabilities are also subject to the consequences for violation of those rules.

In addition to the general public's concern about discipline in the schools, a considerable amount of attention is currently being paid to the issue of disciplining students with disabilities in connection with the pending reauthorization of the IDEA. As this report is being written, OSEP is planning to issue guidelines on the disciplining of students with disabilities. The need for clear, consistent and more complete policy development and communication at all levels on this topic is apparent.

School reform efforts are under way in every state with intense efforts to increase support for public education. However, as one author has commented, "If American schools are becoming war zones—as many teachers, social activists, and student charge—then one of the casualties could be school reform" (Gutscher, 1993, p. 10). Secretary of Education Riley is quoted in that article as saying, "All our efforts to raise the standard of American education will be to no avail unless we provide children with a safe and disciplined environment that is conducive to learning." An important element in that effort must be the elimination of the perception that students with disabilities are exempt from school discipline rules and, at the same time, a clear understanding and acceptance of the need for protecting their rights.

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APPENDIX A

SOURCE DOCUMENTS FOR ANALYSIS OF STATE DISCIPLINE POLICIES

STATE	DOCUMENT TYPE	DOCUMENT TITLE (YEAR)
AL*	Regulations	*Rules of the Alabama State Board of Education* Chapter 290-080-090 Special Programs I, Division of Special Education Services (1993)
AK	State Plan	*Alaska State Plan for FY 1992-94 Under Part B of IDEA* (1991)
AZ*	Statutes	*Arizona Laws* Sections 15-141 to 15-1346 (1993)
CA	Statutes	*California Education Code* Part 27 (1992)
CO	Other	"A Procedural Guidelines Paper on Suspension/Expulsion for Handicapped Students" (1990)
CT	Statutes	*Connecticut General Statutes* §10-233 (1993)
DE*	Regulations	*Administrative Manual: Programs for Exceptional Children* (1991)
FL	Regulations	*Florida State Board of Education Rules Pertaining to Exceptional Children* Chapter 6A §6.0331 (1990)
	Other	Technical Assistance Papers on Discipline, Suspension and Expulsion" (1989 and 1994)
GA	Regulations	*Georgia Code* §160-4-7-.09 Instructional Support - Special Programs (1994)
HI	Regulations	*Title 8, Department of Education, Subtitle 2, Part I - Public Schools*, Chapters 19 and 36 (1987) with Implementation Guidelines and Procedures
ID	Other	*Idaho Special Education Implementation Manual* (1991)
IL	Other	"Discipline of Students with Disabilities," *Administrative Bulletin #91-1* (1991)

STATE	DOCUMENT TYPE	DOCUMENT TITLE (YEAR)
IN*	Regulations	*Title 511 Indiana State Board of Education Article 7, Rules 3-16* (1992)
IA*	Regulations	*Iowa Rules of Special Education* (1990)
KS	Other	"Memorandum of Clarification 94-2" (1994)
KY	Regulations	*Kentucky Administrative Regulations* - 707 K.A.R. 1:180, §14 (1993)
LA	Regulations	*Louisiana Regulations for Implementation of the Exceptional Children's Act* (1991)
ME*	Regulations	*Special Education Regulations*, Chapter 1-1 (1992)
MD	Regulations	*Code of Maryland Administrative Regulations* COMAR 13A.08.01.11G (1991)
MA*	Regulations	*Massachusetts Department of Education Chapter 766 Regulations* (1991)
MI	Other	"Michigan State Board of Education Position Statement: Suspension and Expulsion of Handicapped Students" (1989)
MN*	Statutes	*Minnesota Laws* Chapters 127.26 to .39 - Pupil Fair Dismissal Act (1991)
	Regulations	*Minnesota Special Education Rules* Chapter 3525, § .2470 (1993)
MO	Other	"Recommendations for Discipline Policies Relating to Students with Disabilities" (1993); and, "Disciplining Students for Weapon Use" (1994)
MT	State Plan	*Montana State Plan for FY 1993-95 Under Part B of the IDEA* (1992)
NE*	Regulations	*Nebraska Administrative Rules* Title 92, Chapter 51 (1992)

STATE	DOCUMENT TYPE	DOCUMENT TITLE (YEAR)
NV*	Regulations	*Nevada Administrative Code* Title 6 - Education, Chapter 28 - Special Education (1988)
NH	Statutes	*New Hampshire Education Statutes* 193:13 (1971)
	Regulations	*New Hampshire Standards for the Education of Students with Disabilities* §Ed 1119.11 (1994)
NJ*	Regulations	*New Jersey Administrative Code* Title 6, Chapter 28, §6:28 (1992)
NY*	Regulations	*Regulations of the Commissioner of Education,* Subchapter P, Part 200, § 200.7(b)(3) (1993)
	State Plan	*New York State Plan for FY 1993-95 Under Part B of the IDEA* (1992)
NC	Regulations	*Procedures Governing Programs and Services for Children With Special Needs*, §.1523 (1991)
OK	Regulations	"Policies and Procedures for Special Education in Oklahoma - Discipline and Suspension" (1993)
OR	Other	"Appendix C," *Sample Procedures for Special Education Services in Oregon School Districts,* (1991)
PA*	State Plan	*Pennsylvania State Plan for FY 1992-94 Under Part B of the IDEA* (1991)
	Statutes	*Public School Code of 1949,* §Sch 1318, 22 Pa Code 12.6 - .9 and 14.35 (1991)
RI	Regulations	*Regulations of the Board of Regents for Elementary and Secondary Education Governing the Special Education of Students With Disabilities*, Section I, IV, 4.0 (1992)
SC	Regulations	*South Carolina State Board of Education Regulations*, 43-279 (1991)
SD	Regulations	*Administrative Rules of South Dakota* Title 24, Article 24:05:26 (1993)

STATE	DOCUMENT TYPE	DOCUMENT TITLE (YEAR)
TX	Regulations	*Texas Board of Education Rules for Special Education Services*, Chapter 133 (1992)
UT	Regulations	*Utah State Board of Education Special Education Rules*, Chapter IV.P (1988)
VT	Regulations	*Special Education Rules Appearing in the Vermont State Board of Education Manual of Rules and Practices* (1991)
VA*	State Plan	*Virginia State Plan for FY 1993-95 Under Part B of the IDEA* (1992)
	Regulations	*Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia* (1990)
WV*	Regulations	*Policy 2419: Regulations for the Education of Exceptional Children* (1992)
WI*	Regulations	*Wisconsin Administrative Code* §PI, 11.13 (1990)
WY*	Regulations	*Rules and Regulations Governing Services for Children with Disabilities* (1992)

* Materials accessed through the State Policy Database, a computerized resource being implemented through Project FORUM at the National Association of State Directors of Special Education.